



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 220425-0105]

RIN 0648-BK79

Pacific Island Fisheries; Rebuilding Plan for the American Samoa Bottomfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements a rebuilding plan that includes annual catch limits (ACL) and accountability measures (AM) for the overfished bottomfish stock complex in American Samoa. This action is necessary to rebuild the overfished stock consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final rule is effective [*insert date 30 days after date of publication in the **FEDERAL REGISTER***].

ADDRESSES: Copies of Amendment 5, including an Environmental Assessment and Regulatory Impact Review, and other supporting documents for this action are available at <https://www.regulations.gov/document/NOAA-NMFS-2022-0023-0006>.

FOR FURTHER INFORMATION CONTACT: Heather Cronin, NMFS PIR Sustainable Fisheries, 808-725-5179.

SUPPLEMENTARY INFORMATION: NMFS and the Western Pacific Fishery Management Council (Council) manage the American Samoa bottomfish fishery under the American Samoa Fishery Ecosystem Plan (FEP) and implementing regulations. The fishery primarily targets and harvests a complex of 11 bottomfish management unit species (BMUS), which includes emperors, snappers, groupers, and jacks. Bottomfish are typically harvested in deep waters, though some species are caught over reefs at shallower depths. Most (85 percent) bottomfish habitat is in territorial waters (generally from the shoreline to 3 nautical miles (5.6 km) offshore), with the rest in Federal waters (i.e., the U.S Exclusive Economic Zone) around offshore banks. Fishing for bottomfish in American Samoa primarily occurs within 20 mi (32.2 km) from shore using aluminum catamarans less than 32 ft (9.7 m) long, known locally as alia.

On February 10, 2020, NMFS notified the Council that the American Samoa bottomfish stock complex was overfished and subject to overfishing (85 FR 26940, May 6, 2020). Consistent with section 304(e) of the Magnuson-Stevens Act and implementing regulations at 50 CFR 600.310(j), the Council must prepare, and NMFS must implement, a rebuilding plan within two years of the notification.

Amendment 5 implements a rebuilding plan for the American Samoa bottomfish stock complex that consists of an ACL, and in-season AM, and a higher performance standard should the fishery exceed the ACL. The rebuilding plan implements an ACL of 5,000 lb (2,268 kg) starting in 2022. NMFS is obligated to manage the stock throughout its range, and the complex exists in both territorial and Federal waters. Therefore, we would count harvests from territorial and Federal waters toward the ACL. However, existing data monitoring programs do not differentiate catch from territorial versus Federal waters. The fishing year is the calendar year.

As an in-season AM, if NMFS projects that the fishery will reach the ACL in any year, then we would close the fishery in Federal waters for the remainder of that year. At this time, American Samoa has not developed regulations to implement complementary management to restrict catch in territorial waters if the ACL is reached, and it is not reasonably certain they will implement complementary management measures in the future. Accordingly, as a higher performance standard, if the total annual catch (which includes catch from both Federal and territorial waters) exceeds the ACL during a year, we would close the fishery in Federal waters until NMFS and the Territory of American Samoa implement a coordinated management approach to ensure that catch in Federal and territorial waters is maintained

at levels that allow the stock to rebuild. The rebuilding plan would remain in place until NMFS determines that the stock complex is rebuilt, which is expected to take 10 years if catches are maintained at the specified level. The Council and NMFS selected the 5,000 lb ACL because it is the maximum catch that allows the bottomfish stock to rebuild within the ten-year timeframe permitted under the Magnuson-Stevens Act. This level of catch also helps to minimize cultural, economic and social effects of the rebuilding plan on communities in American Samoa. NMFS and the Council would review the rebuilding plan routinely every two years and modify it, as necessary, per section 304(e) (7) of the Magnuson-Stevens Act.

You may find additional background information on this action in the preamble to the proposed rule (87 FR 6470, February 4, 2022).

Comments and Responses

NOA

On January 21, 2022, NMFS published the notification of availability (NOA) for Amendment 5 and request for public comments (87 FR 3276); the comment period ended March 22, 2022. NMFS received comments from two individuals on Amendment 5 and responds below.

Comment 1: Overfishing is of great concern, and it especially impacts indigenous people. This rebuilding plan addresses key concerns in the American Samoan bottomfish

fishery. I support that once the annual catch limit is reached, the fishery would close in Federal waters for the remainder of the year. Catch rates must decrease to allow the fish population to replenish.

Response: NMFS agrees, and we will continue to manage the bottomfish stock complex in Federal waters to perpetuate sustainable fisheries resources for communities in American Samoa, consistent with the Magnuson-Stevens Act, the FEP and implementing regulations.

Comment 2: NMFS should ensure that recreational and sport fishing is distinguished from indigenous cultural fishing. If NMFS seeks to further limit fishing, recreational and sport fishing should be closed and considered separate from fishing by indigenous people.

Response: Bottomfish fishing in American Samoa is part of *fa'a Samoa*, or "the Samoan way." It is an integral part of culture and daily life, and there are not distinct recreational or sport fisheries for bottomfish. Accordingly, bottomfish are managed under a single ACL that does not distinguish between fishery sectors (e.g. commercial, recreational, subsistence). While the rebuilding plan will limit fishing, it will not do so in a way that disproportionately affects indigenous peoples or other groups. NMFS does not expect this action to substantially change the way the fishery operates with respect to fishing gear, fishing effort, participation, or

intensity. If the ACL is attained and fishing is closed in Federal waters, some fishing activity may move into territorial waters, but NMFS does not expect substantial changes with respect to the availability of fish for cultural, subsistence or commercial purposes. Rebuilding the bottomfish stock will ensure that fishery resources are available for future generations.

Comment 3: NMFS should be actively consulting with the American Samoa Government and should ensure that indigenous fishing communities have leadership and power in decision-making in regard to conservation and fishery rebuilding plans.

Response: We agree. The process of developing fishery management actions places a strong emphasis on inclusive and equitable community input from indigenous and other stakeholders. The community has opportunity for both direct and representative input at multiple points. American Samoa leadership and stakeholders participate in decision-making processes through American Samoa representatives on the Council and its Scientific and Statistical Committee, Council advisory panels, public input during Council deliberations, and through public comment periods during NMFS rulemaking processes. NMFS and the Council work closely with communities and the government of American Samoa through their Council members and representatives on

other Council advisory bodies to ensure that community needs and concerns are heard and addressed.

Comment 4: This rule could be stronger if supplemented by one that allows for closures of territorial waters.

Response: While NMFS agrees that a coordinated approach to management in territorial and Federal waters might produce a more effective rebuilding plan, NMFS does not have the authority to restrict catch in territorial waters. NMFS will monitor catch in territorial and Federal waters relative to the ACL, and will continue to work with our management partners at the American Samoa Department of Marine and Wildlife Resources (DMWR) to improve fisheries management of bottomfish in American Samoa.

Comment 5: It would be incredibly hard to enforce these closures. Fishing can be expected to take place that will go unreported.

Response: While a catch limit which results in a fishery closure may present a disincentive for fishermen to report their catch, we work with our management partners at the Council and DMWR to educate fisherman about the importance of timely and accurate reporting. As needed, NOAA's Office of Law Enforcement and the U.S. Coast Guard enforce Federal fisheries rules. They conduct enforcement activities both on and off the water, and conduct related criminal and civil investigations. The Enforcement Section of the NOAA Office of General Counsel provides legal

support to the NOAA Office of Law Enforcement and other NOAA offices, and prosecutes cases.

Proposed Rule

On February 4, 2022, NMFS published a proposed rule and request for public comments (87 FR 6479); the comment period ended March 21, 2022. NMFS received comments from seven individuals, the American Samoa Department of Marine and Wildlife Resources, and the Governor of American Samoa. NMFS responds below.

Comment 1: Although these actions could harm the local economy in the short-term, there is a much larger long-term incentive to American Samoa by rebuilding the bottomfish stock. If the new regulations are followed, bottomfish would repopulate, and fishermen would be able to benefit from the fish long-term.

Response: NMFS agrees. The Council and NMFS selected the 5,000 lb ACL because this level of catch helps to minimize cultural, economic and social effects of the rebuilding plan on communities in American Samoa. It is also the maximum catch that allows the bottomfish stock to rebuild within the ten-year timeframe permitted under the Magnuson-Stevens Act.

Comment 2: The DWMR and individual commenters note the importance of the fishery to indigenous communities, and express concern about the short-term impact for people that

rely on fishing as a main food source or economic stability.

Response: In selecting a management approach, NMFS and the Council balanced potential short-term effects with the need to rebuild the bottomfish stock to ensure that these species are available for future generations. NMFS and the Council discussed these concerns during the development of the rebuilding plan, and analyzed effects on fishing-dependent communities in the Environmental Assessment for this action. NMFS also considers effects on Samoan and other underserved communities pursuant to Executive Order 12898 on Environmental Justice. These analyses show that this management action would not have short-term impacts to subsistence, cultural, and commercial fishing if the American Samoan Government does not implement complementary management in territorial waters. At this time, American Samoa has not developed regulations to implement complementary management, and it is not reasonably certain they will implement complementary management measures in the future. Therefore, NMFS does not expect impacts to indigenous communities or for people that rely on fishing as a main food source or economic stability.

Comment 3: Because the proposed regulation is limited to Federal waters, while eighty five percent of habitat is in territorial waters, coordination with local authorities

that have jurisdiction over territorial waters is necessary for the plan to bring about the intended effects.

Response: The Council and NMFS selected this rebuilding plan because it would end overfishing and allow the stock to rebuild in ten years, as required by the Magnuson-Stevens Act, while minimizing negative socio-economic impacts to the fishing community. NMFS expects that this rule would provide some conservation benefits by closing Federal waters to fishing and reducing harvest relative to the status quo even if the American Samoa Government does not implement complementary management in territorial waters. However, the timeline to rebuild could potentially be lengthened to greater than 10 years. Accordingly, NMFS would implement the higher performance standard to close Federal waters if the ACL is exceeded, and Federal waters would remain closed until a coordinated approach to achieve rebuilding is implemented. We will continue to work with our management partners at the DMWR to improve fisheries management of bottomfish in American Samoa.

Comment 4: If ACLs and AMs do not work to rebuild the bottomfish populations, requiring fishing permits may help.

Response: The Council, including fishery managers from American Samoa, has discussed implementing permits in the past. However, there are a small number of participants in the fishery, and it is not clear that permitting or a limited access program would provide any additional

management benefit because permits in and of themselves do not reduce fishing mortality. Thus, the best way to reduce fishing mortality is to limit the amount of fish that can be harvested.

Comment 5: It could prove to be problematic to require local bottomfish fishermen to obtain permits in territorial waters, as well as report their catches to NMFS.

Response: This Amendment does not implement a permit requirement in the American Samoa bottomfish fishery, nor does it implement any new reporting requirements for bottomfish fishers.

Comment 6: The DWMR and individual commenters believe the proposed change to the set ACL limit to 5,000 lb will affect the fishermen's jobs and revenue and lead to food shortages of fish.

Response: NMFS and the Council address these concerns in the analysis in the Environmental Assessment and Regulatory Impact Review. The Council and NMFS selected the 5,000 lb ACL because it is the maximum catch that allows the bottomfish stock to rebuild within the ten-year timeframe permitted under the Magnuson-Stevens Act. Any minor short-term impacts to the community are balanced by the long-term benefits of rebuilding the stock. This level of catch also helps to minimize cultural, economic and social effects of the rebuilding plan on communities in American Samoa. Furthermore, the ACL, AM, and higher

performance standard are intended to end overfishing, rebuild the fishery, and mitigate impacts to fishing communities, such that communities that rely on their harvest can continue to benefit from the fishery in the future. The Chief Counsel for Regulation of the Department of Commerce certified that this rule would not have a significant economic impact on a substantial number of small entities. In a Finding of No Significant Impact, NMFS determined that this action will not significantly impact the quality of the human environment. NMFS will evaluate the progress of the rebuilding plan, including all environmental and socioeconomic effects, at least every two years, as required by the Magnuson-Stevens Act, and work with the Council to revise the rebuilding plan if necessary.

Comment 7: There should be short-term financial compensation for Native people who may experience consequences to their local economy, social and cultural practices, and food security.

Response: NMFS does not have the authority under the Magnuson-Stevens Act to provide monetary compensation to fishermen or fishing communities, including Native peoples that may be affected economically, socially or culturally as a result of fishing regulations that are necessary and required to rebuild an overfished stock.

Comment 8: Given the stress that the covid pandemic has inflicted on American Samoa, the American Samoa Government requests that NMFS:

a. Nullify the rebuilding plan if the next stock assessment shows the stocks are healthier.

Response: This contingency is addressed by existing regulations under the Magnuson-Stevens Act. The next benchmark stock assessment for American Samoa bottomfish is scheduled for 2023 and the Council and NMFS will review the resulting information and take appropriate management action, which may include revising elements of the bottomfish rebuilding plan.

b. Assist DMWR in developing a bottomfish community development plan to cushion the impact of fishery economic and cultural loss.

Response: The FEP includes a process and procedures for reviewing and approving community development plans (CDP) for access to western Pacific fisheries under the Magnuson-Stevens Act (section 305(i)(2)). The intent of a CDP is to promote the participation of island communities in fisheries that they have traditionally depended upon, but may not have the capabilities to support continued and substantial participation in, possibly due to economic, regulatory, or other constraints. NMFS and the Council will work with DMWR to explore the potential

for a CDP for American Samoan bottomfish communities.

c. Assist DMWR in developing the territorial bottomfish management plan and the data-limited stock assessment tools that are more appropriate for our fishery.

Response: While this request is outside the scope of the current action, NMFS and the Council have several initiatives to support DWMR in developing territorial bottomfish management plans. NMFS and Council scientists and managers are working with DWMR staff to assess management unit species lists and determine which are most suitable to primarily Federal, combined, or territorial management. As this process proceeds, we will work to identify and address management needs.

d. Support DMWR by providing our staff the tools and training to improve creel data collection, understand the life history stocks, and enforce and develop appropriate fisheries regulations.

Response: DWMR staff provided valuable information on data collection status and challenges at the Pacific Insular Fisheries Monitoring, Assessment & Planning Summit organized by the Council and NMFS in 2019. While this request is outside the scope of the current action, NMFS and the Council have been

working to carry forward the recommendations of the summit, including improving creel surveys and life history information. DMWR will continue to be an integral part of that process through participation in Council plan teams and other working groups. The FishPath workshop that DMWR is planning will bridge this information to management capabilities to identify appropriate management strategies.

e. Support initiatives to manage bottomfish with nearby countries since exploitation of these stocks in nearby countries may impact our local stocks.

Response: Biological connections between insular fish populations may differ from political boundaries, but under the Magnuson-Stevens Act neither NMFS nor the Council have the authority to enter directly into bilateral or multilateral agreements with foreign governments to co-manage fish stocks. While this request is outside the scope of the current action, as our understanding of fish populations' connectivity advances, NMFS will work with American Samoa and other partners to evaluate potential opportunities for ecosystem-based approaches fisheries management, which may include consideration of management measures in U.S. jurisdiction that are complementary with measures enacted in neighboring countries.

Changes from the Proposed Rule

This final rule does not make any substantive changes from the proposed rule.

Classification

Pursuant to section 304(b) (3) of the Magnuson-Stevens Fishery and Conservation Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS did not receive any comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act (PRA).

List of Subjects in 50 CFR Part 665

Accountability measures, American Samoa, Annual catch limits, Bottomfishing, Fisheries, Fishing, Pacific Islands, Rebuilding.

Dated: April 27, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 665 as follows:

PART 665 -- FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Revise § 665.103 to read as follows:

§ 665.103 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter and § 665.15, it is unlawful for any person to do any of the following:

(a) Fish for American Samoa bottomfish MUS or ECS using gear prohibited under § 665.104.

(b) Fish for or possess any American Samoa Bottomfish MUS as defined in § 665.101 after a closure of the fishery in violation of § 665.106.

(c) Sell or offer for sale any American Samoa Bottomfish MUS as defined in § 665.101 after a closure of the fishery in violation of § 665.106.

3. Add § 665.106 to read as follows:

§ 665.106 American Samoa annual catch limits (ACL).

(a) In accordance with § 665.4, the ACL for American Samoa bottomfish MUS is 5,000 lb.

(b) When NMFS projects the ACL will be reached, the Regional Administrator shall publish a document to that effect in the **Federal Register** and shall use other means to notify permit holders. The document will include an advisement that the fishery will be closed, beginning at a specified date that is not earlier than seven days after the date of filing the closure notification for public inspection at the Office of the Federal Register, through the end of the fishing year in which the catch limit is reached.

(c) If the ACL is exceeded in any fishing year, the Regional Administrator shall publish a document to that effect in the **Federal Register** and shall use other means to notify permit holders. The document will include an advisement that the fishery will be closed, beginning at a specified date that is not earlier than seven days after the date of filing the closure notification for public inspection at the Office of the Federal Register. The fishery will remain closed until such time that a

coordinated approach to management is developed that ensures catch in both Federal and territorial waters can be maintained at levels that allow the stock to rebuild or the rebuilding plan is modified based on the best scientific information available.

(d) On and after the date the fishery is closed as specified in paragraph (b) or (c) of this section, fishing for and possession of American Samoa bottomfish MUS is prohibited in the American Samoa fishery management area, except as otherwise authorized by law.

(e) On and after the date the fishery is closed as specified in paragraph (b) or (c) of this section, the sale, offering for sale, and purchase of any American Samoa bottomfish MUS caught in the American Samoa fishery management area is prohibited.